U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 15 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on December 18, 2012. The matter is now before the AAO on a motion to reopen and motion to reconsider. The motions will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner describes itself as a pharmaceutical research and manufacturing business. It seeks to permanently employ the beneficiary in the United States as a scientist (QC). The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

At issue in this case is whether the beneficiary possesses an advanced degree as required by the terms of the labor certification and the requested preference classification.

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).[1] The priority date of the petition is April 24, 2009.[2]

Part H of the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Master's degree in Chemistry.
H.5. Training: None required.
H.6. Experience in the job offered: None required.
H.7. Alternate field of study: Biology or Pharmacy.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 36 months in the pharmaceutical or chemical industry.
H.14. Specific skills or other requirements: "Will accept any suitable combination of education, training and or experience. Will accept Masters [*sic*] degree or US equivalent."

Part J of the labor certification states that the beneficiary possesses a master's degree in chemistry (analytical) from the [redacted] completed in 1991. The record contains a copy of the beneficiary's master's degree and transcripts from the [redacted] and a copy of the beneficiary's Bachelor of Science degree and marks sheet from the [redacted]

The record before the director contained an evaluation from [redacted] for the [redacted]

[1] *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).
[2] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

dated February 18, 2009. The evaluation describes the beneficiary's bachelor's degree as being equivalent to three years of university level education in the U.S. and the beneficiary's master's degree as being equivalent to a U.S. master's degree in chemistry.

The director's decision denying the petition concludes that the beneficiary does not possess an advanced degree as required by the terms of the labor certification and for classification in the requested category.

The petitioner appealed the director's decision to the AAO and submitted the following additional credential evaluations:

- An evaluation from for the . dated February 10, 2009. Mr. concludes that the beneficiary's bachelor's degree is equivalent to three years of undergraduate work in the U.S. and that the beneficiary's master's degree is equivalent to a "Bachelor of Science degree with a major in Analytical Chemistry and a Master of Science degree in Analytical Chemistry."
- An evaluation from the The evaluation is dated May 20, 2002. The evaluation is signed by The evaluation states that the beneficiary's master's degree "considered together with his prior completion of baccalaureate studies, indicate that [the beneficiary] satisfied substantially similar requirements to the completion of a Master of Science Degree in Chemistry from an accredited institution of higher education in the United States."
- An evaluation from dated February 4, 2009. The evaluation concluded that the beneficiary's "Bachelor of Science and Master of Science degrees in Chemistry" from India, equate to a "Bachelor of Science degree in Chemistry and a Master of Science degree in Analytical Chemistry."

The AAO sent the petitioner a notice of intent to deny (NOID), informing the petitioner that it had consulted the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO)[3] and found that, contrary

[3] According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* http://edge.aacrao.org/info.php. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *See An Author's Guide to Creating AACRAO International*

to the information submitted on appeal, the beneficiary's education was not the foreign degree equivalent of a U.S. Master's degree. In response to the NOID, the petitioner submitted the following evidence:

- An evaluation from for dated August 14, 2012. The evaluation describes the beneficiary's bachelor of science degree and Master of Science degrees as being the equivalent of a U.S. bachelor's and master's degree in chemistry;
- Two copies of an evaluation from for dated August 16, 2012, one of which is signed. Ms. concluded that the beneficiary has the equivalent of a Bachelor of Science degree with a major in analytical chemistry and a Master of Science degree in analytical chemistry;
- An article written by and titled "Three Year Indian Undergraduate Degrees: Recommendations for Graduate Admission Consideration" published in April 2005 in ADSEC News;
- A letter from a Graduate Admissions Advisor at the University of Missouri-Columbia dated September 30, 2005;
- Printout from the New Country Index from the International Education Research Foundation (IERF); and
- Printout from the World Higher Education Database (WHED) titled "Higher Education System for India," dated February 5, 2012.

The AAO ultimately dismissed the appeal finding that the evidence in the record did not establish that the beneficiary possessed a U.S. master's degree or foreign equivalent degree as required for the classification sought and by the terms of the labor certification.

On motion, counsel asserts that the beneficiary's master's degree in chemistry should be considered the foreign equivalent to a U.S. master's degree and that the beneficiary therefore meets the terms of the labor certification and the requirements for classification as an advance degree professional.

II. LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

Publications available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
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> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[4] *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

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[4] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.,* 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
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> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification.

Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
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> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

In the instant case, the petitioner relies on the beneficiary's three-year Bachelor of Science from the followed by a Master of Science from the as being equivalent to a U.S. master's degree.

As noted in the NOID, the AAO has reviewed the EDGE database.[5] According to EDGE, the beneficiary's three-year Bachelor of Science is comparable to three years of university study in the United States, and the Master of Science is comparable to a bachelor's degree in the United States.

On motion, counsel asserts that the AAO did not properly consider the evidence that was submitted on appeal. The AAO has evaluated the evidence and found that the information in the record is insufficient to establish that the beneficiary has the required level of education. Specifically, the evaluation from does not discuss the methodology or reasoning used to reach her conclusion. Furthermore, she states that she used the P.I.E.R. Workshop Report on South Asia titled "The Admission and Placement of Students from Bangladesh, India, Pakistan, Sri Lanka" (P.I.E.R. report); however, this publication does not support Ms. conclusion that the beneficiary's education is equivalent to a U.S. master's degree. Instead, the P.I.E.R. report states that in the case of a two year master's degree which requires a three-year bachelor's degree for admission (the exact characterization of the beneficiary's credentials), the student "may be considered for graduate admission with no advanced standing." Therefore, the PIER report indicates that the beneficiary's credentials may be suitable for admission to a graduate program and not that the credentials are the equivalent of a U.S. master's degree. The evaluations from Mr. and Mr. likewise omit information on the methodology used to determine the stated equivalency. Further, the evaluations from Mr. and Mr. do not disclose the source information used to make their determinations.

The three remaining evaluations attempt to assign a specific number of U.S. credit hours to the beneficiary's courses. Regarding the beneficiary's Indian bachelor's degree and master's degree, the evaluation from states "[t]he content of these two programs included over 90 semester hours of completed coursework in chemistry." The evaluation also does not disclose the source material for this specific evaluation, nor does it discuss the methodology by which the evaluator reached his conclusions about the number of credit hours the beneficiary completed. The evaluation from Ms. states that it was based only on an examination of the beneficiary's degrees and marks sheets. From this information, Ms. attempts to assign credit hours to the beneficiary's

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[5] In *Confluence International, Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification required a degree and did not allow for the combination of education and experience.

classes, concluding that the beneficiary's education was equivalent to 164 U.S. credit hours, specifically 100 credit hours of undergraduate course and 64 credits of graduate course. Ms. cites her sources of comparison as certain accelerated bachelor's and master's degree programs in the United States. The existence of accelerated programs in the United States is not useful in evaluating unrelated foreign degrees. At issue is not whether it is possible to obtain a baccalaureate in less than four years in an accelerated program in the United States or elsewhere, but the actual equivalence of the specific degree the beneficiary obtained. The beneficiary did not compress his studies to obtain a degree in less than four years from an institution that grants four-year degrees. Rather, he completed the regular program of study for a three-year degree program. The evaluation from Ms. also attempts to assign U.S. credit hours to the beneficiary's education. Ms. concludes that the beneficiary's education is equivalent to 129 credit hours of undergraduate courses and 30 credit hours in graduate courses. None of these evaluations explain on what basis the calculation was made. The beneficiary's transcripts do not assign a number of hours or credits to the classes and there is no indication in the record that the evaluators had an alternative source of information from the university to enable them to make an accurate calculation. Furthermore, each of the evaluations comes to a markedly different conclusion regarding the number of credit hours that may be assigned to the beneficiary's classes, as well as whether or not the classes the beneficiary took could be considered undergraduate or graduate classes. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The evaluations of record are not consistent and provide little support for their determination as to the number of credits.

In addition to the credential evaluations, counsel also submits supplemental information concerning the Indian educational system. Counsel asserts that an article written by and titled published in April 2005 in News, should be considered as evidence that the beneficiary has the equivalent of a U.S. master's degree. The article states that "a three-year bachelor's degree and a two-year India master's degree (with at least 50% in marks obtained) from a

NAAC accredited institution should be comparable to a U.S. master's degree." The authors go on to state that the rationale behind this statements is that "many master's programs require external examinations and the completion of a thesis in addition to class work." It is noted that the beneficiary completed his education in 1991, 14 years before the article's authors suggest that changes are taking place in the Indian educational system. Furthermore, there is no evidence in the record that the beneficiary's degree required external examinations or completion of a thesis. Therefore, the information in this article does not appear to be applicable to the beneficiary's education.

Counsel further submits information from and the asserting that these sources support the contention that the beneficiary possess the equivalent of a U.S. master's degree. The courts have held that USCIS is entitled to prefer the information in EDGE in evaluating a beneficiary's credentials, and these additional sources do not provide sufficient evidence that the information in EDGE should not be relied upon in this instance. Specifically, the states that the Indian two year master's degrees allow entry into Indian Ph.D. program, but does not state or imply that an equivalency can be established between the U.S. master's degree and the Indian master's degree. Additionally, the letter from the indicates that their admissions office would be willing to accept a three year bachelor's degree plus a two year master's degree for admission into their Ph.D. programs. The existence of one university in the United States that would allow this combination of credentials does not indicate that the combination of credentials can be considered equivalent to a U.S. master's degree. Furthermore, the opinion of one graduate admissions officer, speaking generally about a combination of education, is not probative evidence to establish that the beneficiary has a U.S. master's degree or foreign equivalent degree for these proceedings.

Therefore, based on the conclusions of EDGE and a review of all submitted documents, the evidence in the record is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. master's degree.

On motion, counsel further refers to decisions issued by the AAO concerning the advanced degree professional classification, but does not provide the published citations. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.[6] Therefore, the beneficiary

[6] The petitioner does not claim that the beneficiary possessed five years of post-baccalaureate experience in the specialty.

does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

The Minimum Requirements of the Offered Position

The petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification. Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

In the instant case, the labor certification states that he offered position requires a master's degree in Chemistry, Biology or Pharmacy. For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses a master's degree in Chemistry, Biology or Pharmacy. Therefore, the petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must also be denied for this reason.

III. CONCLUSION

In summary, the petitioner failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. Therefore, the beneficiary does not qualify for classification as a member of the professions holding

an advanced degree under section 203(b)(2) of the Act. The director's decision denying the petition is affirmed.

The petition will remain denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motions to reopen and reconsider are granted and the decision of the AAO dated December 18, 2012 is affirmed. The petition remains denied.